

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 10Cf2105

JOHN R. BROOKS,
D/O/B: 10/29/1962,
57 Bel Aire Drive,
Madison, WI 53513,

and

DANIEL R. BROOKS,
D/O/B: 02/13/1960,
57 Bel Aire Drive,
Madison, WI 53513,

Case No. 10Cf2106

Defendants.

SUMMONS

THE STATE OF WISCONSIN TO SAID DEFENDANT:

John R. Brooks
57 Bel Aire Drive
Madison, WI 53513

and

Daniel R. Brooks,
57 Bel Aire Drive,
Madison, WI 53513,

A complaint, a copy of which is attached, having been made before me accusing the defendant of committing the crime of Theft by Contractor, contrary to Wis. Stat. §§ 779.02(5),

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (608) 266-4678 (TTY -- (608) 266-4625) AND ASK FOR THE DANE COUNTY CIRCUIT COURT ADA COORDINATOR.

943.20(1)(b), and 943.20(3)(c); and the crime of Failure to Provide Lien Waiver, contrary to Wis. Stat. §§ 100.20(2)(a) and 100.26(3).

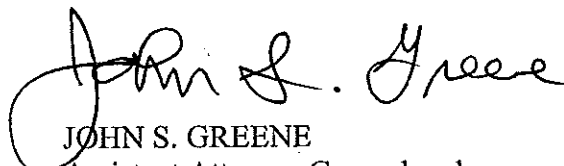
You, John R. Brooks, and Daniel R. Brooks, are, therefore, summoned to appear before Dane County Court Commissioner Todd E. Meurer, in Room 1A of the Dane County Courthouse, 215 South Hamilton Street, in the City of Madison, Wisconsin, to answer said complaint, on the 10th day of January 2011, at 10:30 o'clock in the forenoon, and in case of your failure to appear, a warrant for your arrest may be issued.

Dated this 16th day of December, 2010.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General

BARBARA L. OSWALD
Assistant Attorney General
State Bar No. 1021541

A handwritten signature in black ink, appearing to read "John S. Greene". The signature is fluid and cursive, with the first name "John" being the most prominent part.

JOHN S. GREENE
Assistant Attorney General and
Special Prosecutors for Dane County
State Bar No. 1002897

Attorneys for Plaintiff

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3936 (JSG)
(608) 266-3067 (BLO)
(608) 267-2778 (Fax)

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

Complaining witness:
Jeffrey W. Hole

v.

JOHN R. BROOKS

DOB 10/29/1962
57 Bel Aire Drive
Madison, WI 53713

Case No. 2010-CF- 2105

and

DANIEL R. BROOKS

DOB 2/13/1960
57 Bel Aire Drive
Madison, WI 53713,

Case No. 2010-CF- 2106

Defendants.

CRIMINAL COMPLAINT

I, Jeffrey W. Hole, being first duly sworn, state upon information and belief that:

COUNT ONE: Theft by Contractor (PTAC) (Kinnamon): On or about the period between June 23, 2007, and December 27, 2007, in Dane County, Wisconsin, defendants, as agents of Sunrooms by Design of Wisconsin, Inc. and as parties to the crime, were responsible for the intentional use of more than \$10,000 of money obtained from Keith Kinnamon and Karen Kinnamon pursuant to an agreement for the improvement of land, which money was used without the

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owners' consent for a purpose other than the payment of claims due or to become due from the defendants for labor or materials used in the improvements before all claims had been paid in full. Defendants did so contrary to their authority and with the intent to convert the money to their own use. This violates Wis. Stat. §§ 779.02(5) and 943.20(1)(b), a Class G felony under Wis. Stat. § 943.20(3)(c), punishable by a fine not to exceed \$25,000, imprisonment not to exceed 10 years, or both.

COUNT TWO: Failure to Provide Lien Waiver (PTAC) (Kinnamon): On or about December 20, 2007, defendants, as parties to the crime and as employees of Sunrooms By Design of Wisconsin, Inc., intentionally failed to give or furnish to Keith Kinnamon and Karen Kinnamon, in Dane County, Wisconsin, lien waivers in writing from all contractors, subcontractors, and material suppliers, including Stoughton Lumber Company, Inc., and Bettenhausen Electric, in connection with the Kinnamons' home improvement project, despite the Kinnamons having made the final payment on their home improvement contract to Sunrooms By Design of Wisconsin, Inc. This violates Wis. Adm. Code §ATCP 110.02(6)(L), which was promulgated pursuant to Wis. Stat. §100.20(2)(a), and constitutes a Misdemeanor, punishable by a fine of not less than \$25 nor more than \$5,000 or imprisonment in the county jail for not more than one (1) year, or both, pursuant to Wis. Stat. §100.26(3).

COUNT THREE: Theft by Contractor (PTAC) (Sickels): On or about the period between July 18, 2007, and December 5, 2007, in Dane County, Wisconsin,

defendants, as agents of Sunrooms by Design of Wisconsin, Inc. and as parties to the crime, were responsible for the intentional use of more than \$10,000 of money obtained from William Sickels and Cheryle Sickels pursuant to an agreement for the improvement of land, which money was used without the owners' consent for a purpose other than the payment of claims due or to become due from the defendants for labor or materials used in the improvements before all claims had been paid in full. Defendants did so contrary to their authority and with the intent to convert the money to their own use. This violates Wis. Stat. §§ 779.02(5) and 943.20(1)(b), a Class G felony under Wis. Stat. § 943.20(3)(c), punishable by a fine not to exceed \$25,000, imprisonment not to exceed 10 years, or both.

COUNT FOUR: Failure to Provide Lien Waiver (PTAC) (Sickels): On or about December 12, 2007, defendants, as parties to the crime and as employees of Sunrooms By Design of Wisconsin, Inc., intentionally failed to give or furnish to William Sickels and Cheryle Sickels, in Dane County, Wisconsin, lien waivers in writing from all contractors, subcontractors, and material suppliers, including Stoughton Lumber Company, Inc., and Gillham Drywall, for the proportionate value of all labor, services and products or materials furnished or delivered as of that date, in connection with the Sickels' home improvement project, despite the Sickels having made payments to Sunrooms By Design of Wisconsin, Inc. totaling \$36,900 as of December 12, 2007, as required by the defendants. This violates Wis. Adm. Code §ATCP 110.02(6)(m), which was promulgated pursuant to Wis. Stat. §100.20(2)(a), and constitutes a Misdemeanor, punishable by a fine of not

less than \$25 nor more than \$5,000 or imprisonment in the county jail for not more than one (1) year, or both, pursuant to Wis. Stat. §100.26(3).

COUNT FIVE: Theft by Contractor (PTAC) (Funnemark): On or about the period between December 12, 2007, and January 31, 2008, in Dane County, Wisconsin, defendants, as agents of Sunrooms by Design of Wisconsin, Inc. and as parties to the crime, were responsible for the intentional use of more than \$10,000 of money obtained from Carol Funnemark and Kenneth Funnemark pursuant to an agreement for the improvement of land, which money was used without the owners' consent for a purpose other than the payment of claims due or to become due from the defendants for labor or materials used in the improvements before all claims had been paid in full. Defendants did so contrary to their authority and with the intent to convert the money to their own use. This violates Wis. Stat. §§ 779.02(5) and 943.20(1)(b), a Class G felony under Wis. Stat. § 943.20(3)(c), punishable by a fine not to exceed \$25,000, imprisonment not to exceed 10 years, or both.

COUNT SIX: Failure to Provide Lien Waiver (PTAC) (Funnemark): On or about January 23, 2008, defendants, as parties to the crime and as employees of Sunrooms By Design of Wisconsin, Inc., intentionally failed to give or furnish to Carol Funnemark and Kenneth Funnemark, in Dane County, Wisconsin, lien waivers in writing from all contractors, subcontractors, and material suppliers, including OCI Trimming, LLC (a subsidiary of Overson Construction, Inc.) and Brunsell Lumber, for the proportionate value of all labor, services and products or

materials furnished or delivered as of that date, in connection with the Funnemarks' home improvement project, despite the Funnemarks having paid \$22,500 to Sunrooms By Design of Wisconsin, Inc. as of December 12, 2007, as required by the defendants. This violates Wis. Adm. Code §ATCP 110.02(6)(m), which was promulgated pursuant to Wis. Stat. §100.20(2)(a), and constitutes a Misdemeanor, punishable by a fine of not less than \$25 nor more than \$5,000 or imprisonment in the county jail for not more than one (1) year, or both, pursuant to Wis. Stat. §100.26(3).

COUNT SEVEN: Failure to Provide Lien Waiver (PTAC) (Waldbillig and Collins): On or about December 20, 2007, defendants, as parties to the crime and as employees of Sunrooms By Design of Wisconsin, Inc., intentionally failed to give or furnish to William Waldbillig and Joan Collins, in Dane County, Wisconsin, lien waivers in writing from all contractors, subcontractors, and material suppliers, including Stoughton Lumber Company, Inc., in connection with a home improvement project, despite Waldbillig and Collins having made the final payment on their home improvement contract to Sunrooms By Design of Wisconsin, Inc. This violates Wis. Adm. Code §ATCP 110.02(6)(L), which was promulgated pursuant to Wis. Stat. §100.20(2)(a), and constitutes a Misdemeanor, punishable by a fine of not less than \$25 nor more than \$5,000 or imprisonment in the county jail for not more than one (1) year, or both, pursuant to Wis. Stat. §100.26(3).

COUNT EIGHT: Failure to Provide Lien Waiver (PTAC) (Belscamper):

On or about December 6, 2007, defendants, as parties to the crime and as employees of Sunrooms By Design of Wisconsin, Inc., intentionally failed to give or furnish to Bruce Belscamper and Judith Belscamper, in Dane County, Wisconsin, lien waivers in writing from all contractors, subcontractors, and material suppliers, including Bettenhausen Electric, in connection with the Belscampers' home improvement project, despite the Belscampers having made the final payment on their home improvement contract to Sunrooms By Design of Wisconsin, Inc. This violates Wis. Adm. Code §ATCP 110.02(6)(L), which was promulgated pursuant to Wis. Stat. §100.20(2)(a), and constitutes a Misdemeanor, punishable by a fine of not less than \$25 nor more than \$5,000 or imprisonment in the county jail for not more than one (1) year, or both, pursuant to Wis. Stat. §100.26(3).

COUNT NINE: Failure to Provide Lien Waiver (PTAC) (Benishek): On or about November 15, 2007, defendants, as parties to the crime and as employees of Sunrooms By Design of Wisconsin, Inc., intentionally failed to give or furnish to Timothy Benishek and Tamara Benishek, in Dane County, Wisconsin, lien waivers in writing from all contractors, subcontractors, and material suppliers, including CR Construction and Renovations, Inc., in connection with the Benisheks' home improvement project, despite the Benisheks having made the final payment on their home improvement contract to Sunrooms By Design of Wisconsin, Inc. This violates Wis. Adm. Code §ATCP 110.02(6)(L), which was

promulgated pursuant to Wis. Stat. §100.20(2)(a), and constitutes a Misdemeanor, punishable by a fine of not less than \$25 nor more than \$5,000 or imprisonment in the county jail for not more than one (1) year, or both, pursuant to Wis. Stat. §100.26(3).

FACTUAL BASIS

I, Jeffrey W. Hole, am an investigator employed by the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection (DATCP), and bases this complaint upon my personal knowledge, information and belief.

As part of my duties, I was asked to investigate the business activities of the defendants, John Brooks and Dan Brooks, who had ownership interests in and who jointly operated Sunrooms By Design of Wisconsin, Inc. ("SBD"), a Wisconsin corporation engaged in the business of home remodeling. During its existence, SBD's offices were located at 1008 East Broadway Avenue, Monona, Wisconsin. As reported on SBD's website, John Brooks and Dan Brooks are brothers.

During my investigation, I reviewed, among other things, the complaints filed by the victims and documentation they provided; home improvement and subcontractor contracts, invoices and correspondence related to the victims' projects; the records of SBD's business account at Monona State Bank into which customer payments were deposited and from which project-related expenditures were made; accounting records prepared and maintained by SBD's accountant,

Sorge CPA & Business Advisors, SC; and account statements reflecting expenditures made by a business credit card controlled by John Brooks. I also conducted interviews of Dan Brooks, Sorge accountant Robert Ferris, and several of the victims.

I believe the bank records of Monona State Bank are accurate and reliable because they are maintained in the regular course of the bank's operations. I believe the accounting records prepared by Sorge CPA are accurate and reliable because they were prepared and maintained by accounting or bookkeeping professionals in the course of their employment by the defendants. I believe that Dan Brooks' statements are reliable to the extent that they are against his penal and financial interests. I believe that the statements of the SBD customers are reliable because they are citizen witnesses with firsthand knowledge of the matters at issue. I believe that the contracts, invoices and other documents relating to the home improvement projects described in this complaint are reliable because they are documents created in the normal course of business, and there are no indications they are inaccurate.

Both John Brooks and Dan Brooks signed contracts on behalf of SBD, and John Brooks regularly signed contracts and other documents identifying himself as "President" of SBD. On behalf of SBD, Dan Brooks executed each of the six home improvement contracts at issue here: that is, the contracts with the Belscampers, the Benisheks, the Funnemarks, the Kinnamons, the Sickels, and

William Waldbillig and Joan Collins. Both John Brooks and Dan Brooks had extensive contact with the customers of SBD.

Records obtained from Monona State Bank reflect the signature of John Brooks—either actual or stamped—on every check issued from the SBD business account at that bank. SBD's accountant, Bob Ferris, of Sorge Accounting in Monona, Wisconsin, confirmed in an interview that his firm drafted checks for SBD at the direction of John Brooks, and that either John Brooks would sign the checks or Ferris would stamp John Brooks' signature on them.

I interviewed Dan Brooks on March 18, 2008. He stated that SBD had engaged Sorge CPA to, among other things, handle the payment of bills at the direction of the defendants. Dan Brooks stated that Sorge paid the bills at the direction of "us," which I understood to mean Dan Brooks and John Brooks. When asked who determined the payments to be made by SBD and the amounts of such payment amounts, Dan Brooks replied "we did."

Dan Brooks acknowledged that project payments were commingled, a fact confirmed by the records of the SBD account at Monona State Bank as well as the accounting records maintained for SBD by Sorge Accounting. None of the records I reviewed reflected separate tracking of the expenses related to individual projects. SBD's accountant, Robert Ferris, confirmed in his interview that SBD did not track expenditures for individual projects.

In his interview, Dan Brooks also stated that customers' payments were sometimes used to pay bills for purposes unrelated to their project, including other

projects, marketing and “everything that’s involved in a business.” Dan Brooks also specifically stated that funds received from the Benisheks and the Funnemarks were used to pay bills other than those associated with their remodeling projects.

I know that DeForest, Sun Prairie, Cottage Grove, Madison, Monona, Verona, and McFarland are located entirely within Dane County.

AS TO COUNTS ONE AND TWO:

During my investigation, I reviewed a complaint filed by Keith Kinnamon as well as a written contract between Keith and Karen Kinnamon and SBD, operated by the defendants. The contract, which was signed on June 23, 2007, provides that SBD would build an addition to the Kinnamons’ residence located at 504 Riverside Drive, DeForest, Wisconsin, for the price of \$47,000. The contract was signed by Dan Brooks on behalf of SBD, and the Kinnamons dealt with both defendants during the course of their project.

The Kinnamons paid the full contract price to SBD, plus \$260 for the building permit, through the following payments:

June 23, 2007	\$ 4,700.00	(Ck. No. 14066)
August 30, 2007	\$18,800.00	(Ck. No. 14208)
November 12, 2007	\$18,800.00	(Ck. No. 14261)
December 20, 2007	\$ 4,960.00	(Ck. No. 14313)

I reviewed the records of the bank account at Monona State Bank used by SBD, which reflect all deposits into the account, as well as all expenditures and

transfers out of the account. Those records reflect the deposit of each of the four checks listed above into SBD's bank account.

I also reviewed invoices and other records to determine the possible expenditures made by the defendants related to the Kinnamons' project. This includes a contract between SBD and CR Construction and Renovation, Inc. ("CR") under which CR was to perform the labor to construct the Kinnamons' addition, for a price of \$7,050.

In addition, Stoughton Lumber Company, Inc. supplied materials for the project between October 19, 2007 and December 27, 2007, at a price of \$9,793.50. SBD paid nothing toward this bill at any time. Stoughton Lumber filed a lien on the Kinnamons' property on February 29, 2008, in the amount of \$9,793.50. Stoughton Lumber subsequently filed an action to foreclose on its lien on the Kinnamons' property, which is currently pending in Dane County Circuit Court.

Similarly, Bettenhausen Electric provided materials and services for the Kinnamons' project, for which it billed SBD \$1,500. SBD failed to pay Bettenhausen Electric anything for its bill, resulting in a lawsuit against both SBD and Keith Kinnamon to collect on the bill.

The records reviewed reveal that the amount SBD received from the Kinnamons was more than necessary to pay all of the expenses incurred by SBD to perform the project. Specifically, between August 30, 2007, and December 20, 2007, the Kinnamons paid the defendants a total of \$42,560. The records for SBD's business bank account for this time period reveal expenditures from the

account for possibly construction-related purposes in the amount of \$20,427.53. This number includes expenditures on all of the defendants' projects, not just the Kinnamons'.

Even if the defendants had expended the entire \$20,427.53 on the Kinnamons' project, they would have had an additional \$22,132.47 with which to pay the bills of suppliers and subcontractors who supplied materials or provided services for the Kinnamons' project. This amount exceeds the \$9,793.50 owed to Stoughton Lumber and the \$1,500 owed to Bettenhausen Electric, which defendants never paid.

Notwithstanding the deposit of the Kinnamons' \$18,800 payment on August 30, 2007, the SBD checking account had a balance of only \$2,996.11 as of September 28, 2007. During this time period, there are no expenditures from the SBD account that appear to relate to the Kinnamons' project, which did not commence until November 2007.

Similarly, the Kinnamons again paid the defendants \$18,800 on November 12, 2007. As of November 23, 2007, the account balance was \$6,980.96. Between November 12 and November 23, 2007, the construction-related expenditures from the account totaled \$7,190.33. This figure includes expenditures that may have been made for projects other than the Kinnamons'. Thus, even if the entire balance of \$6,980.96 were attributable to the Kinnamons' payment on November 12, 2007, a minimum of \$4,628.71 was diverted for other purposes during this period.

The Kinnamons indicated that they did not give consent or authority to the defendants to use their funds for any purposes other than the construction of their addition. Nor did the defendants ever provide them with any lien waivers in connection with their project.

I interviewed Karen Kinnamon, and she stated that she and her husband dealt with both John Brooks and Dan Brooks during the course of their project. Ms. Kinnamon stated that John Brooks told her that the defendants needed payments from the Kinnamons in order to pay for materials and labor for their project. Ms. Kinnamon also stated that after she found out that the defendants had not paid bills for materials and the subcontractor, she spoke to John Brooks, who assured her they were going to pay the subcontractors. Ms. Kinnamon also confirmed that they had never received lien waivers from the defendants, and that they had specifically discussed lien waivers with Dan Brooks during their first meeting while reviewing the contract and proposal.

Based on my review of all the records and information available to me, I conclude the defendants used over \$10,000 of the Kinnamons' payments for purposed unrelated to their construction project.

AS TO COUNTS THREE AND FOUR:

During my investigation, I reviewed a complaint filed by William Sickels, involving a construction contract between Mr. Sickels and his wife, Cheryle Sickels, and SBD. The contract, which was signed on June 29, 2007, provides that SBD would build an addition to the Sickels' residence located at 1828 Oakland

Avenue, Sun Prairie, Wisconsin, for the price of \$41,000. The contract was signed by Dan Brooks on behalf of SBD, and the Sickels dealt with both defendants during the course of their project.

The Sickels paid a total of \$36,900 to the defendants for their project, through the following payments:

July 18, 2007	\$ 4,100.00	(Ck. No. 10554)
August 30, 2007	\$16,400.00	(Ck. No. 10594)
November 24, 2007	\$16,400.00	(Ck. No. 10693)

The records of SBD's bank account reflect the deposit of each of the checks listed above.

I also reviewed invoices and other records to determine the possible expenditures made by the defendants related to the Sickels' project. This includes a contract between SBD and CR Construction and Renovation, Inc. ("CR") under which CR was to perform the labor to construct the Sickels' addition, for a price of \$5,625.

In addition, Stoughton Lumber Company, Inc. supplied materials for the project between October 15, 2007 and January 3, 2008, at a price of \$9,630.51. SBD paid nothing toward this bill at any time. Stoughton Lumber filed a lien on the Sickels' property on February 29, 2008, in the amount of \$9,630.51.

Similarly, Gillham Drywall, Inc. provided materials and services for the Sickels' project between November 27 and December 14, 2007, for which it billed SBD \$1,490. SBD failed to pay Gillham Drywall, Inc. anything towards its bill,

resulting in Gillham Drywall filing a lien against the Sickels' property on May 7, 2008, in the amount of \$1,490.

The records reviewed reveal that the amount SBD received from the Sickels was more than necessary to pay all of the expenses incurred by SBD to perform the project. As of November 30, 2007, the Sickels had paid the defendants a total of \$36,900. The invoices provided by SBD's accountant, Sorge CPA, reflect potential costs related to the Sickels' project of less than \$20,000, namely the following:

Stoughton Lumber	\$9,630.51
CR Construction	5,625.00
Gillham Drywall	1,490.00
CityWide Insulation	1,322.00
Air Quality Systems	846.11
Ace Foam Insulation	745.00
City of Sun Prairie	112.88
Clearview Window Washing	70.00

The total of these items is \$19,841.50. Subtracting from the total the unpaid Stoughton Lumber (\$9,630.51) and Gillham Drywall (\$1,490.00) invoices, which defendants did not pay, leaves project-related costs at \$8,720.99. Assuming the defendants paid all of these bills in full, they would still have had \$28,179.01 with which to cover all other project expenses, including the Stoughton Lumber and Gillham Drywall invoices.

Records of SBD's bank account reflect that the account balance dropped to \$6,808.57 on December 5, 2007, and was essentially depleted by January 31, 2008, at which time the balance was \$107.14. During this time period, there are

no expenditures from the SBD account that appear to relate to the Sickels' project other than some payments to the vendors listed above, such as CR Construction.

Since the defendants received more from the Sickels than was required to pay all of the defendants' expenses associated with the project—including the Stoughton Lumber and Gillham Drywall bills—it follows that the defendants used more than \$10,000 of the Sickels' payments for purposes other than the completion of the Sickels' project.

I interviewed William Sickels in connection with his complaint. He stated that he spoke with both Dan and John Brooks in the course of the project. Mr. Sickels stated that in early January 2008, John Brooks telephoned him to request the final contract payment, and Mr. Sickels informed Mr. Brooks that he would not pay him until he received lien waivers for the project. John Brooks indicated that he would do that, but never did.

The Sickels indicated that they did not give consent or authority to the defendants to use their funds for any purposes other than the construction of their addition. Nor did the defendants ever provide them with any lien waivers in connection with their project.

Based on my review of all the records and information available to me, I conclude the defendants used over \$10,000 of the Sickels' payments for purposes unrelated to their construction project.

AS TO COUNTS FIVE AND SIX:

During my investigation, I reviewed a complaint filed by Carol Funnemark and Kenneth Funnemark, involving a home improvement contract between themselves and SBD. The contract, which was dated November 7, 2007, provides that SBD would build an addition to the Funnemarks' residence located at 4433 Wind Chime Way, Cottage Grove, Wisconsin, for the price of \$44,000. The contract was signed by Dan Brooks on behalf of SBD, and the Funnemarks dealt with both defendants during the course of their project.

The Funnemarks paid the defendants \$22,500, through a check (No. 1002) dated December 12, 2007, and hand-delivered the same day to Dan Brooks. The records of SBD's bank account reflect that the check was deposited the same day-- December 12, 2007.

I also reviewed invoices and other records to identify any possible expenditures made by the defendants related to the Funnemarks' project. This includes a contract between SBD and "O.C.I.," which refers to OCI Trimming, LLC (a subsidiary of Overson Construction, Inc.) under which OCI was to construct the Sickels' addition, for a price of \$19,500.

Based on information provided by OCI, OCI purchased materials, hired subcontractors, and performed substantial labor on the project through January 25, 2008, when it was first informed by Dan Brooks that SBD had dissolved and shut down operations. As of that point, according to OCI, SBD owed OCI, subcontractors and materials supplies at least \$14,055.84 for work already

performed and materials supplied for the Funnemarks' project. Based upon the information available to OCI, SBD had spent to date approximately \$5,450 for project-related expenses.

A review of SBD's bank account records showed that the date the Funnemarks' \$22,500 payment was deposited (December 12, 2007), SBD wrote two checks totaling over \$15,000 for purposes unrelated to the Funnemarks' project. The first check (No. 1847) was for \$6,013.77, payable to John Brooks. The second check (No. 1848), for \$9,000, was payable to Stoughton Lumber. This check corresponds to a payment owed to Stoughton Lumber in that amount for a different customer's project, as reflected in the records maintained by SBD's accountant, Sorge Accounting.

The bank records reflect that the SBD account balance on the day the Funnemarks' \$22,500 check was deposited (December 12, 2007), was \$33,017.07, and dropped to \$7,327.01 on December 18, 2007. The bank records do not reflect any payments by SBD between December 12 and December 18, 2007 that relate to the Funnemarks' project.

As of January 31, 2008, the SBD account balance was \$107.14. Between the time the Funnemarks' \$22,500 check was deposited on December 12, 2007, and January 31, 2008, the only expenses it appears SBD paid towards the Funnemarks' project expenses was \$5,919.62, comprised of \$1,950 to OCI and \$3,969.62 to Norandex, which supplied materials for the project. These figures are established by a letter from OCI and by documents received from Norandex

reflecting multiple project-related payments made by the defendants through credit cards and other means apart from the SBD checking account.

Given that the Funnemarks paid SBD \$22,500 and less than \$6,000 was expended by SBD on their project, I have concluded that the defendants used more than \$10,000 for purposes other than the Funnemark project.

Based upon a letter I received from Chad Olstad of Overson Construction, Inc., dated March 18, 2008, the Funnemarks paid OCI an additional \$8,550 for the completion of their project. In addition, the Funnemarks provided copies of checks reflecting their payment of the following amounts to other subcontractors and suppliers on their project:

Brunsell Lumber:	\$3,477.93 (Ck. No. 1004, Feb. 11, 2008)
Air Quality Systems, Inc.:	\$ 474.75 (Ck. No. 1006, Feb. 12, 2008)
Ace Foam Insulation:	\$ 800.00 (Ck. No. 1007, Feb. 24, 2008)

I interviewed Carol Funnemark in connection with the Funnemarks' complaint. She stated that she and her husband spoke with both Dan and John Brooks in the course of the project, and that John Brooks told her they needed payment "up front" to purchase supplies and materials for the project, and also that they were subcontracting labor and supplies. Further, according to Carol Funnemark, both John Brooks and Dan Brooks stated they need payment to get the project going, and she subsequently hand-delivered the check for \$22,500 to Dan Brooks in the SBD office.

The Funnemarks stated that they did not give consent or authority to the defendants to use their funds for any purposes other than the construction of their

addition. Nor did the defendants ever provide the Funnemarks with any lien waivers in connection with their project.

Based on my review of all the records and information available to me, I conclude the defendants used over \$10,000 of the Funnemarks' payment for purposes unrelated to their construction project.

AS TO COUNT SEVEN:

During my investigation I reviewed a complaint filed by William Waldbillig and Joan Collins, as well a written home improvement contract between themselves and SBD. The contract, which was signed on August 13, 2007, provided for SBD to perform remodeling work at the Collins/Waldbillig residence located at 2812 Waunona Way, Madison, Wisconsin, for a total price of \$27,000. The contract was signed by Dan Brooks on behalf of SBD. Ms. Collins and Mr. Waldbillig paid the full contract price to SBD, plus an additional \$270, with the final payment being made on December 20, 2007.

Despite the fact that the contract amount was paid in full, the defendants failed to provide any lien waivers. On March 10, 2008, Stoughton Lumber Company, Inc., which supplied materials for the project, filed a lien against the Collins-Waldbillig property in the amount of \$3,716.40.

AS TO COUNT EIGHT:

During my investigation I reviewed a complaint filed by Bruce and Judith Belcamper, as well a written home improvement contract between themselves and SBD. The contract, which was signed on June 26, 2007, provided for SBD to

perform remodeling work at the Belscampers' residence located at 6696 Redstone Lane, Verona, Wisconsin, for a total price of \$36,500. The contract was signed by Dan Brooks on behalf of SBD. The Belscampers paid the full contract price to SBD, plus an additional \$158.50, with the final payment being made on December 6, 2007.

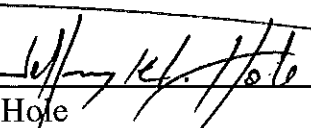
Despite the fact that the contract amount was paid in full, the defendants failed to provide any lien waivers. On April 4, 2008, Bettenhausen Electric brought an action against the defendants and the Belscampers in the amount of \$1500 for unpaid services it performed on the Belscampers' project.

AS TO COUNT NINE:

During my investigation I reviewed a complaint filed by Timothy Benishek, as well a written home improvement contract between Timothy and Tamara Benishek and SBD. The contract, which was signed on June 9, 2007, provided for SBD to provide remodeling work at the Benisheks' residence located at 5804 Country Walk, McFarland, Wisconsin, for a total price of \$43,500, which according to Mr. Benishek defendants subsequently reduced because of problems with the project. The contract was signed by Dan Brooks on behalf of SBD. The Benisheks paid SBD in full, with the final payment being made on November 15, 2007.

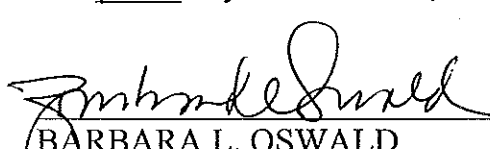
Despite the fact that the contract amount was paid in full, the defendants failed to provide any lien waivers. On April 4, 2008, CR Construction and

Renovation, Inc. brought an action against the defendants and the Benisheks in the amount of \$1500 for unpaid services it performed on the Belscampers' project.



Jeffrey W. Hole
Investigator, Wisconsin Department of
Agriculture, Trade & Consumer Protection

Subscribed and sworn to before me
and approved for filing,
this 15th day of December, 2010.



BARBARA L. OSWALD
Assistant Attorney General and
Special Prosecutor for Dane County
State Bar # 01021541
My commission is permanent.